1952.

File No. Cotton Control
Legal Department II/52(N)

B BRANCH

Subject:— Notifications under the Bombay Cotton Control Act, 1942

P.4
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194 e.

504-B

LEGAL DEPARTMENT.

A revised draft notification in place of the A. & F.D. draft at pages 5-7 ante is sent herewith subject to the following observations :-

The A. & F.D. note in the draft notification in so far as it provides for the disposal of Jarilla cotton before the end of January and penalises a person for possessing such cotton after that date is not in order. No such power can be spelt out of the provisions of section 3 of the Bombay Cotton Control Act,1942. If Jarilla variety of cotton is permitted to be cultivated under section 3 of the Act, it becomes a standard cotton under clause (e) of section 2 of the Act and its cultivation and possession cannot be prohibited for a part of the year only. Apart from the above legal position, an order providing for a penalty of fine for contravening the order cannot be validly made unless there is a specific provision in the Act.

Id/-B.P.D. 14/7
Additional Deputy Secretary to Government.

U.R. to A. & F.D.No. 8099, dated the 15th May 1952.

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The view taken by the Cotton Botanist, B.S. Surat and concurred in by the Director of Agriculture is not correct.

2. Section 3(1)(a) of the Bombay Cotton Control Act, 1942, provides that the State Government may, by notification in the Official Gazette in respect of any local area specified in the notification, declare its intention of -

(i) fixing the variety of cotton, the cultivation of which will be permitted in such area,

(ii) prohibiting the cultivation of any other variety of cotton in such area.

Had it not been for the provision of sub-clause (iii) of the said section it would have been possible under sub-clause (i) to specify the variety of cotton the cultivation of which shall be permitted and to specify under sub-clause (ii) all other varieties of cotton the cultivation of which is prohibited. Sub-clause (iii) of the said section, however, provides that the State Government may, by notification in the Official Gazette, declare its intention of prohibiting in such area the mixing of any standard cotton with any other standard cotton or of the variety of cotton specified in sub-clause (ii) with any standard cotton. It is with reference to this word "specified" a used in sub-clause (iii) that the opinion was expressed in U.R.No. 13878 dated the 26th August 1952 that the Department may specify under the said clause other variety of cotton the cultivation of which is intended to be prohibited. The same view was again reaffirmed in the Additional Deputy Secretary's Opinion No. 17891/B dated the 28th October 1952 in another case where it was pointed out that the word "specified" means

"to mention specifically, to state in full in explicit terms, to particularise or to distinguish by words one thing from another". From the provisions of sub-clause (ii) read with sub-clause (iii) it appears that the varieties of cotton the cultivation of which is intended to be prohibited are to be specified under sub-clause (ii) and they should not be referred to generally as "other than those specified in preceding para". Whatever may be the practical difficulty pointed out by the Cotton Botanist, it is necessary to comply with the provisions of section 3(1)(a)(ii) and (iii) of the Act and to specify all the varieties by name under the proposed notification.

3. The second reason why the words "or all the varieties of cotton other than that specified in clause (1)" used in the Director of Agriculture's draft were deleted from the draft was that those words were used after specifying five varieties of cotton, namely :-

(1) Dhulia,

(2) Banilla,

(3) Jarila,

(4) N.R.,

(5) Tamaswadi.

If the intention is that all the varieties of cotton other than "Virnar (197-3)" should be prohibited from being cultivated, it was not necessary to specify even those five varieties and then to say that "all varieties of cotton other than that specified in clause (1)", are also prohibited. (Please see 1 Q.B. (1893) p. 82.

4. The contention of the Cotton Botanist as concurred in by the Director of Agriculture that it is necessary to retain clauses (iii) and (iv) of the original draft which are bodily incorporated from section 3(a)(i) of the Act, also is not correct. It is no use repeating the words of the section when they are inapplicable.

to the case under consideration. Under the proposed notification "Virnar (197-3)" is the only variety of cotton which is intended to be cultivated. If so, that becomes the standard cotton within the definition of section 2(e) of the Act and no other variety would be a standard cotton and it would not be appropriate to x issue a notification prohibiting the mixing of any standard cotton with any other standard cotton when there is no other standard cotton recognised for the purpose of the Act in the area concerned. For these reasons the Director of Agriculture's draft has been revised as in the Legal Department draft at page 15 c/S. and is consistent with the intention the Director has in view.

Id/-J.R.D. 20/11
Additional Secretary to Government.

U.R. to A.& F.D. No. 19434/B dated 21st November 1952.

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